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Jeffery Law Siew Su & Ors v Yu Gui

B FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO Q-02(i)-068–10 OF 2016
RAUS SHARIF PCA, SURIYADI, ZAINUN ALI, BALIA YUSOFF AND JEFFREY TAN FCJJ
28 MARCH 2017

C

Damages — Assessment — Causation — The High Court ordered registrar to assess damages payable to defendants occasioned by injunction it set aside — Registrar awarded damages wholly for monies spent by defendants in setting up factory which closed before injunction was obtained — Subject matter of D *injunction nothing to do with setting up of factory — Whether no causal link between injunction and damages awarded — Whether damages awarded by registrar unsustainable in law*

The High Court set aside an ex parte injunction it had granted the appellants E and ordered the registrar to assess the damages occasioned by the injunction payable to the respondent and four other defendants. The injunction had ordered the fifth defendant to return two containers of veneer while the first, second and third defendants (who were shareholders of the fourth defendant company) were ordered to pay the company the proceeds of sale of its goods F and to disclose their assets and to be cross-examined on their affidavits. They were ordered not to leave Sarawak until their cross-examination was completed. The respondent and the other defendants claimed they had incurred a total loss of RM12,064,667.48. The senior assistant registrar ('the SAR') awarded RM1,557,882.04 as damages, being monies the defendants, G particularly the respondent, had spent in setting up the factory. The figure comprised RM500,000 for purchase of furniture, machinery, machine parts, etc, for the factory, RM370,000 for payment of rental and rental deposit to the owner of the land occupied by the factory, RM44,719 for air ticket charges and insurance premium for 12 factory workers from China, RM44,176 for freight H and customs charges for machinery imported from China and another RM100,000 for machinery imported from Taiwan, RM300,000 for salaries of foreign workers for the factory, RM16,570 for miscellaneous expenses and RM20,000 for petty cash incurred in the setting up of the factory, RM59,900 for hardware purchases and RM102,517.04 for renovation of the factory's staff I quarters. On appeal, the judge in chambers set aside the SAR's award holding that there was no causal link between the damages awarded and the injunction. The judge noted that the monies awarded by the SAR were spent when the factory was set up and as the factory had closed two weeks before the injunction order was obtained, the damages awarded was not 'occasioned by the

injunction'. On the respondent's appeal, the Court of Appeal reversed the judge's decision and restored the SAR's order of damages resulting in the instant appeal.

Held, allowing the appeal, setting aside decision of the Court of Appeal and restoring order of the High Court judge:

(1) The order of the High Court judge to the SAR was to assess damages occasioned by the ex parte injunction. But the SAR's inquiry was wholly out of kilter and proceeded entirely on the wrong basis. By right, the inquiry should have assessed 'the loss which is the natural consequence of the injunction under the circumstances of which the party obtaining the injunction has notice at the time when he makes his application'. Yet, the SAR assessed 'the loss suffered by the defendants, in particular the respondent, for the setting up of the factory and/or any other loss due to the said injunction'. Not a sen was awarded for damages occasioned by the ex parte injunction. The entire damages awarded were for the 'setting up' of the factory and towards the outgoings of the factory or its operations. What or where was the causal link between the injunction and the damages claimed? The factory had closed even before the grant of the ex parte injunction (see para 9).

(2) Given that the factory had already closed, it could be surmised that all sums invested for the setting up of the factory and towards the outgoings of the factory or its operations were expended well before the grant or service of the ex parte injunction. Since the two events — closure of the factory and service of the ex parte injunction — were separated by time, there could not have been a causal link between the injunction and the damages claimed. It was not possible that the injunction could have occasioned the loss of past investments/outgoings. But even if those two events had coincided, it still had to be shown that it was the ex parte injunction that caused the damages claimed. The injunction's order to return the two containers of veneer could have disrupted the factory's production and, perhaps, the first, second and third defendants could have been inconvenienced by the order to remain in Sarawak. But, otherwise, the orders of the ex parte injunction, or any one or a combination of them, could not have caused the claimed loss. It was so plain and obvious that there was no causal link between the injunction and the damages claimed and without that causal link, the award of damages could not be sustained in law (see para 9).

[Bahasa Malaysia summary

Mahkamah Tinggi mengenepikan injunksi ex parte yang diberikannya kepada perayu-perayu dan memerintah untuk menaksir ganti rugi yang berlaku akibat injunksi kena dibayar kepada responden dan empat defendan yang lain. Injunksi tersebut memerintahkan defendan kelima untuk mengembalikan dua

bekas venir sementara defendan pertama, kedua dan ketiga (yang mana adalah pemegang saham defendan keempat) diperintahkan untuk membayar syarikat hasil jualan barangannya dan untuk mendedahkan aset mereka dan untuk diperiksa balas atas afidavit-afidavit mereka. Mereka diperintah untuk tidak meninggalkan Sarawak sehingga pemeriksaan balas selesai. Responden dan defendan-defendan yang lain mendakwa mereka telah menanggung jumlah kerugian sebanyak RM12,064,667.48. Timbalan pendaftar kanan ('TPK') mengawardkan RM1,557,882.04 sebagai ganti rugi, sebagai wang defendan-defendan, terutamanya responden, telah belanja dalam mendirikan kilang tersebut. Jumlah termasuk RM500,000 bagi pembelian perabot, mesin, bahagian mesin, dan lain-lain, untuk kilang, RM370,000 bagi bayaran sewa dan deposit sewa kepada pemilik tanah yang diduduki oleh kilang, RM44,719 untuk caj-caj tiket penerbangan dan premium insurans bagi 12 pekerja kilang dari China, RM44,176 bagi kos pengangkutan dan kastam bagi mesin yang diimpot dari China dan RM100,000 lagi untuk mesin yang diimpot dari Taiwan, RM300,000 bagi gaji pekerja-pekerja asing kilang, RM16,570 bagi pembelanjaan pelbagai dan RM20,000 bagi wang runcit yang ditanggung dalam mendirikan kilang tersebut, RM59,900 bagi pembelian perkakasan dan RM102,517.04 bagi pengubahsuaian kuarter pekerja kilang. Atas rayuan, hakim mengenepikan award TPK dengan memutuskan bahawa tidak terdapat hubungan sebab di antara ganti rugi yang diawardkan dan injunksi tersebut. Hakim mengambil kira bahawa wang yang diawardkan oleh TPK digunakan apabila kilang didirikan dan kilang telah ditutup dua minggu sebelum perintah injunksi diperolehi, ganti rugi diawardkan bukan 'occasioned by the injunction'. Atas rayuan responden, Mahkamah Rayuan mengakas keputusan hakim dan memulihkan perintah TPK terhadap ganti rugi mengakibatkan rayuan ini.

Diputuskan, membenarkan rayuan, mengenepikan keputusan Mahkamah Rayuan dan memulihkan perintah hakim Mahkamah Tinggi:

(1) Perintah hakim Mahkamah Tinggi kepada TPK adalah untuk menaksir ganti rugi yang ditanggung akibat injunksi ex parte tersebut. Tetapi siasatan TPK secara keseluruhannya tidak seimbang dan diteruskan secara sepenuhnya atas asas yang salah. Sepatutnya, siasatan tersebut patut menilai 'the loss which is the natural consequence of the injunction under the circumstances of which the party obtaining the injunction has notice at the time when he makes his application'. Tetapi, TPK menilai 'the loss suffered by the defendants, in particular the respondent, for the setting up of the factory and/or any other loss due to the said injunction'. Tidak sesen pun di awardkan bagi ganti rugi yang ditanggung akibat injunksi ex parte tersebut. Ganti rugi sepenuhnya adalah untuk 'setting up' kilang dan kepada pembelanjaan kilang atau operasinya. Apa atau di mana hubungan sebab di antara injunksi dan ganti rugi yang dituntut?

Kilang telah ditutup sebelum pemberian injunksi ex parte (lihat perenggan 9).

(2) Memandangkan kilang telah ditutup, ia dapat diandaikan bahawa kesemua jumlah yang dilaburkan bagi mendirikan kilang dan kepada pembelanjaan kilang atau operasinya telah dibelanjakan dengan baik sebelum pemberian atau serahan injunksi ex parte. Memandangkan kedua-dua kejadian — penutupan kilang dan serahan injunksi ex parte — dipisahkan oleh masa, tidak terdapat hubungan sebab di antara injunksi tersebut dan ganti rugi yang dituntut. Ia tidak mungkin bahawa injunksi boleh membuatkan kerugian pelaburan terdahulu/pembelanjaan. Tetapi walaupun kedua-dua kejadian berlaku pada masa yang sama, ia masih mesti ditunjukkan bahawa ia adalah injunksi ex parte yang menyebabkan ganti rugi yang dituntut. Perintah injunksi untuk memulangkan kedua-dua bekas venir boleh menganggu pengeluaran kilang dan, mungkin defendan pertama, kedua dan ketiga boleh diganggu dengan perintah untuk kekal berada di Sarawak. Tetapi, sebaliknya, perintah-perintah injunksi ex parte, atau mana-mana satu atau gabungan mereka, tidak dapat menyebabkan kerugian yang dituntut tersebut. Ia adalah jelas dan nyata bahawa tidak terdapat hubungan sebab di antara injunksi dan ganti rugi yang dituntut dan tanpa hubungan sebab tersebut, award ganti rugi tidak dapat dipertahankan dari segi undang-undang (lihat perenggan 9).]

Notes

For a case on causation, see 6(1) *Mallal's Digest* (5th Ed, 2015) para 309.

Cases referred to

Air Express Ltd v Ansett Transport Industries (Operations) Pty Ltd (1981) 33 ALR 578, HC (refd)

Allen and others v Jambo Holdings Ltd and others [1980] 2 All ER 502, CA (refd)

Attorney-General v Albany Hotel Company [1896] 2 Ch 696, CA (refd)

Barclays Bank Ltd v Rosenberg and another [1985] Lexis Citation 1096; Financial Times, 12 June 1985, QBD (refd)

Chaplin v Hicks [1911-13] All ER Rep 224, CA (refd)

Cheng Hang Guan & Ors v Perumahan Farlim (Penang) Sdn Bhd & Ors [1988] 3 MLJ 90, HC (refd)

F Hoffmann-La Roche & Co AG & Ors v Secretary of State for Trade and Industry [1975] AC 295, HL (refd)

Fraser & Neave Ltd v Yeo Hiap Seng Ltd [1988] 1 SLR 96, CA (refd)

Goo Sing Kar v Dato' Lim Ah Chap & Ors [2013] 3 MLJ 374, CA (refd)

GS Gill Sdn Bhd v Descente Ltd [2010] 4 MLJ 609, FC (refd)

Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd, The Wagon Mound [1961] AC 388, PC (refd)

Sunseekers Pte Ltd v Joshua [1990] 2 MLJ 350, HC (refd)
Tharros Shipping Co Ltd v Bias Shipping Ltd [1994] 1 Lloyd's Rep 577 (refd)
Triodos Bank NV v Dobbs and another; Dobbs and another v Morrison and others [2005] EWHC 108 (Ch), Ch D (refd)
Yu Gui v Jeffery Law Siew Su & Ors [2016] 1 MLJ 102, CA (refd)

Alvin Yong (Shirleen Ong with him) (Chong Brothers Advocates) for the appellants.
Ernest Chua (Ernest Chua & Co Advocates) for the respondent.

Jeffrey Tan FCJ (delivering judgment of the court):

[1] On 29 June 2009, the High Court granted an ex parte injunction to the appellants/plaintiffs against the respondent/second defendant and four other defendants. That ex parte injunction ordered (i) return by the fifth defendant of the subject in dispute (two containers of veneer), (ii) payment by the first to third defendants (shareholders of the fourth defendant company — Rich Efficient Wood Industries Sdn Bhd) of the proceeds of sale of the fourth defendant's goods to the fourth defendant, (iii) disclosure by the first to third defendants of the assets of the first to third defendants, (iv) cross-examination of the first to third defendants on their affidavits, as well as granted a Mareva injunction against the first to third defendants who were ordered not to leave Sarawak until conclusion of their cross-examination.

[2] On 20 September 2009, the High Court set aside that ex parte injunction and ordered 'damages occasioned thereby to be assessed by the Deputy Registrar and to be paid by the (Appellants/Plaintiffs) to the Defendants'. The appellants appealed against the order dated 29 September 2009. But that appeal was dismissed by the Court of Appeal on 15 October 2009. The learned senior assistant registrar ('SAR') then proceeded to assess the 'damages occasioned'.

[3] The respondent and other defendants claimed a total loss of RM12,064,667.48. The learned SAR surmised that the quantum of damages to be assessed was 'the loss suffered by the defendants in particular (by) the (Respondent) for the setting up of the factory and or any other loss due to the said injunction'. At the close of the inquiry, the learned SAR ruled that the respondent suffered the following losses that aggregated to RM1,557,882.04:

> From all the evidence tendered I hereby allow the damages as follows:
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> (i) RM896,248.00 for the purchase of furniture, machineries, machine parts, etc. This would be allowed in the sum of RM500,000.00 this is based on the reason that as being testified during the hearing of the assessment of damages itself that only one machine was brought in and the other machine [had] been planted and existed in the said factory affixed and was provided by the landlord.

(ii) Claim of RM420,000.00 for payment of rental deposit and rental to Ong Seng Guan, the owner of the factory land to be deducted in the sum of RM50,000.00 as the Plaintiff did contribute to the same at the initial stage of setting up the said factory, so the amount allowed would be RM370,000.00.

(iii) RM44,719.00 for air ticket charges and insurance premium for 12 workers from China hereby allowed in total of the whole sum.

(iv) RM44,176.00 for freight and customs charges for machineries from China allowed in total sum claimed as the Defendant succeed[ed] in showing all the relevant evidence, receipt and vouchers.

(v) RM20,000.00 for petty cash expenses allowed in total as this would be a reasonable amount to be claimed as per setting up a business.

(vi) RM16,570.00 for factory miscellaneous this would be allowed in total as well.

(vii) RM546,302.44 for salaries of workers from China and Bangladesh allowed [in] the sum of RM300,000.00 as the total was too excessive to [be] allow[ed] the whole sum as the rest [could] be covered under other miscellaneous expenses.

(viii) RM59,900.00 on hardware accessories and cutter this claim would also be allowed in total as per claimed.

(ix) RM102,517.04 on staff quarters renovations as the defendant did manage to [prove] all the expenses as claimed.

(x) RM135,660.00 to buy machineries from Taiwan. This was also allowed in the sum of RM100,000.00 as there [were] some other machineries that already existed in the said factory and was admitted by parties as well.

The following are hereby dismissed as the 2nd Defendant failed to prove to the court the expenses which accumulated to the following sum ...

[4] The appellants appealed to judge in chambers. The learned judge first held that 'the burden is upon the (Respondent) to prove that he sustained loss and damages as a result of the injunction order obtained by the (Appellants) against him and the 4th Defendant'. The learned judge found that all alleged monetary contribution and expenditure of the respondent were expended at the time when the fourth defendant was set up, and incisively asked 'In what way (could) those monetary contribution and expenditure (be) damages (occasioned) by the injunction?'. The learned judge allowed the appeal and set aside the order of the learned SAR:

DW2 testified that the factory was closed down on 15 June 2009 because the first plaintiff sealed it. The established evidence shows that the injunction order was granted only on 29 June 2009, which was 14 days after the closure. What it shows is that the fourth defendant had already closed down its operation even before the injunction order was made. Hence, by all accounts, it cannot be said that the loss

suffered by the first defendant as the result of the closure of the fourth defendant company (was) occasioned by the injunction order. In other words, the first defendant has failed to prove a causal link between the alleged loss and damage and the injunction order. Hence, I allow the appeal with costs of RM2,000.

[5] Against that latter order of the learned judge the respondent appealed to the Court of Appeal who allowed the appeal and restored the award of the learned SAR (see *Yu Gui v Jeffery Law Siew Su & Ors* [2016] 1 MLJ 102). The appellants soon obtained leave to raise the following 'questions of law':

(a) whether the 'causal link' between the injunction and the damage suffered as set out in *Goo Sing Kar v Dato' Lim Ah Chap & Ors* [2013] 3 MLJ 374 is to be determined by the 'but for' between the injunction and the damage suffered (or) is to be determined by the 'loss of chance test' as set out in *Chaplin v Hicks* [1911-13] All ER Rep 224 which is a test in contract law or both;

(b) whether the 'foreseeable test' as propounded in the *Overseas Tankship (UK) Ltd v Morts Dock and Engineering Co Ltd, The Wagon Mound* [1961] AC 388 is applicable in determining the 'causal link' between the injunction and the damage suffered if it is determined that the 'loss of chance' test as set out in *Chaplin v Hicks* [1911-13] All ER Rep 224 is applicable when determining the 'causal link' between the injunction and the damage suffered; and

(c) if it is determined that the 'loss of chance' test as set out in *Chaplin v Hicks* [1911-13] All ER Rep 224 is applicable when determining the 'causal link' between the injunction and the damage suffered, whether it is in law necessary to establish a 'successive sufficient cause' giving rise to liability and whether the liability can be negated by novus actus interveniens.

[6] On 7 February 2017, we heard and allowed the appeal. We set aside the order of the Court of Appeal and restored the order of the learned judge of the High Court. We now give our reasons for our decision.

[7] Inserted in the ex parte order dated 29 June 2009 extracted by the appellants was an undertaking by the appellants 'to abide by any order that the Honourable Court may make as to damages in case the Court should hereafter be of the opinion that the 1st to 5th Defendants have sustained ... by reason of this order which the Plaintiffs ought to pay'. It is, but of course, 'the usual rule of the Court, that an applicant for an interlocutory injunction must give an undertaking to be answerable in damages as a condition of his obtaining the injunction ... Upon drawing up an order for an interlocutory injunction the registrar invariably inserts such an undertaking on the part of the plaintiff, even though, as frequently happens, it has not been mentioned in court, but has

been taken for granted. Of course such an undertaking must be voluntary: the Court cannot compel a person to give an undertaking; and, if the plaintiff declines to give it, either in court or before the registrar, the order will not be made, or, if pronounced, will not be drawn up' (*Attorney-General v Albany Hotel Company* [1896] 2 Ch 696 per North J). 'The purpose of the undertaking is to vest the court with the jurisdiction to make the appropriate orders to recompense the loss suffered by the party who is enjoined when it is subsequently established that the applicant was not entitled to the injunction in the first place' (*Interlocutory Injunctions* by Tan Woon Tiang and Koh Kok Wah at p 12). 'This requirement applies even if the plaintiff has no assets and is legally aided: *Allen and others v Jambo Holdings Ltd and others* [1980] 2 All ER 502. It is true, that perhaps, in such circumstances the undertaking is an empty shell and should not therefore be demanded since the maxim is that equity does not act in vain. But the response to this argument is that such a plaintiff may win damages at the trial and yet may have wrongly obtained an interlocutory injunction as in *Barclays Bank Ltd v Rosenberg and another* [1985] Lexis Citation 1096; Financial Times, 12 June 1985. In such an eventuality, the damages awarded would constitute assets available to meet the liability on the undertaking' (*Cheng Hang Guan & Ors v Perumahan Farlim (Penang) Sdn Bhd & Ors* [1988] 3 MLJ 90 per Edgar Joseph Jr J, as he then was). 'The practice of exacting an undertaking as to damages from a plaintiff to whom an interim injunction is granted originated during the Vice Chancellorship of Sir James Knight Bruce who held that office from 1841–1851. At first it applied only to injunctions granted ex parte but after 1860 the practice was extended to all interlocutory injunctions. By the end of the century the insertion of such an undertaking in all orders for interim injunctions granted in litigation between subject and subject had become a matter of course ... The court has no power to compel an applicant for an interim injunction to furnish an undertaking as to damages. All that it can do is to refuse that application if he declines to do so. The undertaking is not given to the defendant but to the court itself. Non-performance of it is contempt of court, not breach of contract, and attracts the remedies available for contempt; but the court exacts the undertaking for the defendant's benefit. It retains a discretion not to enforce the undertaking if it considers that the conduct of the defendant in relation to the obtaining or continuing of the injunction or the enforcement of the undertaking makes it inequitable to do so ...' (*F Hoffmann-La Roche & Co AG & Ors v Secretary of State for Trade and Industry* [1975] AC 295, at pp 360–361 per Lord Diplock). But '... whether an inquiry as to damages should be ordered lies with the discretion of the trial judge. It is not for the defendant to insist that such inquiry should be made' (*GS Gill Sdn Bhd v Descente Ltd* [2010] 4 MLJ 609 per James Foong FCJ, delivering the judgment of the court).

[8] 'The fact that an inquiry/assessment of damages has been directed ... does not raise a presumption that damage has in fact been suffered' (*Fraser &*

Neave Ltd v Yeo Hiap Seng Ltd [1988] 1 SLR 96 per Wee Chong Jin CJ). 'At the inquiry the onus is on the defendant to prove both the fact of damage and its causation (*Tharros Shipping Co Ltd v Bias Shipping Ltd* [1994] 1 Lloyd's Rep 577). The assessment is made on the same basis as that on which damages for breach of contract would be assessed if the undertaking had been a contract between the claimant and the defendant that the claimant would not prevent the defendant from doing the act prohibited by the injunction (*F Hoffmann-La Roche & Co AG & Ors v Secretary of State for Trade and Industry* [1975] AC 295 at p 361, per Lord Diplock). The defendant must show that both the type of loss and any links in the chain of causation can reasonably be regarded as having been in the contemplation of the parties when the injunction was granted (*Tharros Shipping* case, above, per Waller J). Causation must be established not simply on a 'but for' basis; prima facie the undertaking must be shown to be the exclusive cause of the loss, though this does not mean that every conceivable or theoretical cause of the damage must be dealt with (*Triodos Bank NV v Dobbs and another; Dobbs and another v Morrison and others* [2005] EWHC 108 (Ch), Lightman J)' (*Injunctions* by David Bean, Andrew Burns and Isabel Parry (11th Ed) at 6-07). There must be a causal link between the injunction and the damage suffered by the defendant (see *Sunseekers Pte Ltd v Joshua* [1990] 2 MLJ 350 per Chan Sek Keong J, as he then was). 'In the end ... the question becomes one of fact: did the making of the order cause the loss? The onus of proof must, in accordance with general principles, lie on the defendant who asserts that he sustained damage by reason of the order' (*Air Express Ltd v Ansett Transport Industries (Operations) Pty Ltd* (1981) 33 ALR 578 per Gibbs J).

[9] The order of the learned High Court judge to the learned SAR was to assess damages occasioned by the ex parte injunction. That order was wholly at one with the principle that damages assessed and awarded must be damages occasioned by the injunction. But the inquiry of the learned SAR, with respect to him, was wholly out of kilter. For that inquiry ensued entirely on the wrong basis. By right, that inquiry should assess 'the loss which is the natural consequence of the injunction under the circumstances of which the party obtaining the injunction has notice at the time when he makes his application (*Kerr on Injunctions* (6th Ed) at p 667). The order to the learned SAR was to assess damages occasioned by the injunction. It was a simple direction to follow. Yet the learned SAR went off on a tangent and proceeded to assess 'the loss suffered by the defendants in particular for the (respondent) for the setting up of the factory and or any other loss due to the said injunction'. At the end of it, the learned SAR awarded (i) RM500,000 'for the purchase of furniture, machineries, machine parts, etc', (ii) RM370,000 'for payment of rental deposit and rental to Ong Seng Guan, the owner of the factory land', (iii) 'RM44,719 for air ticket charges and insurance premium for 12 workers from China', (iv) RM20,000 for petty cash expenses, (v) 'RM16,570 for factory miscellaneous', (vi) RM300,000.00 'for salaries of workers from China and Bangladesh', (vi) 'RM59,900 on hardware accessories and cutter',

(vii) 'RM102,517.04 on staff quarters renovation', and (viii) 'RM100,000 to buy machineries from Taiwan'. Not a sen was awarded for damages occasioned by the ex parte injunction. The entire damages awarded were for the 'setting up' of the factory and towards the outgoings of the factory or its operations. The sum/s invested for the setting up of the factory and towards the outgoings of the factory or its operations was/were the basis upon which the damages were measured. It should be reiterated that damages could not be awarded unless occasioned by the ex parte injunction. But what or where was the causal link between the ex parte injunction and the damages claimed? The factory had closed even before the grant of the ex parte injunction. Given that the factory had already closed, then it could be surmised that all sum/s invested for the setting up of the factory and towards the outgoings of the factory or its operations were expended well before the grant or service of the ex parte injunction. Since the two events — closure of the factory and service of the ex parte injunction — were separated by time, then there could not have been a causal link between the ex parte injunction and damages claimed. While the present could affect the future, it could not affect the past. Hence, it was not possible that the ex parte injunction could have occasioned the loss of past investments/outgoings. But even if the two events — closure of the factory and service of the ex parte injunction — coincided, it must yet still be shown that it was the ex parte injunction that caused the damages claimed. And in the instant case, we could not imagine how an ex parte injunction that ordered (i) return of two containers of veneer, (ii) payment of the proceeds of sale to the fourth defendant, (iii) disclosure of assets, (iv) cross-examination of parties on their affidavits, (v) non-dissipation of assets, as well as ordered the first to third defendants not to leave Sarawak until the conclusion of their cross-examination, could possibly cause the damages claimed 'for the purchase of furniture, machineries, machine parts, etc' 'for payment of rental deposit and rental to Ong Seng Guan, the owner of the factory land', 'for air ticket charges and insurance premium for 12 workers from China', 'for petty cash expenses', 'for factory miscellaneous', 'for salaries of workers from China and Bangladesh', 'for hardware accessories and cutter', 'for staff quarters renovation', and 'for machineries from Taiwan'. The return of the two containers could disrupt the factory production. Perhaps, the first to third defendants were inconvenienced by the order to remain in Sarawak. But otherwise, the orders of the ex parte injunction, or any one or a combination of them, could not have caused the claimed loss. It was so plain and obvious that there could not have been a causal link between the ex parte injunction and the damages claimed. With respect, the claim for damages could not bear a moment's examination. When we heard the appeal, we found ourselves at a total loss to explain how the Court of Appeal could restore the order of the learned SAR. Learned counsel for the respondent could also not enlighten us on the causal link. Without the causal link, the award of damages could not be sustained in law. The issue was as basic as that. It was never as thorny and on a knife edge as suggested by the leave questions. The appeal was disposed without

A the need to answer the leave questions.

[10] It was for those reasons that we allowed the appeal with costs, for here and below, of RM30,000, set aside the order of the Court of Appeal and restored the order of the learned judge of the High Court.

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Appeal allowed, decision of the Court of Appeal set aside and order of the High Court judge restored.

Reported by Ashok Kumar

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